IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19-9-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.2218 of 2003

S. Kannan ... Appellant

Vs.

1. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Nagercoil - 4.

2. The Chairman-cum- Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,
Chennai - 10. ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.6855 of 2001 dated 26.3.2003.

This writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records onthe file of the second respondent in his proceedings No. E7/41584/2000 dated 16.8.2000 and quash the same and direct the respondents to pay the monetary benefits to the petitioner with 18% interest and costs.

For Appellant : Mr.R.Singaravelan

For Respondents : Mr.G.Senthilkumar

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.6855 of 2001 dated 26.3.2003, dismissing the writ petition filed by the appellant seeking monetary benefits from the date of retrospective promotion.

2. The brief facts necessary for disposal of the writ appeal are as follows:

(a) The appellant/writ petitioner joined duty as Junior Assistant as direct recruit in the respondents department on 17.10.1974 originally as a Trainee and as regular Junior Assistant from 22.10.1974. He was ousted from service for want of vacancy on 30.11.1974 and thereafter from 19.12.1974 he was re-appointed and posted as Bill Clerk in the vacancy caused due to suspension of another Junior Assistant.

(b) The Junior Assistant post is higher than that of the Bill Clerk post. The educational qualification for both the posts were also different. For the post of Junior Assistant, the qualification required is a pass in PUC and for Bill Clerk, the required qualification is SSLC. The appellant is a Commerce graduate and he was selected to the post of Junior Assistant based on his qualification. However, he was posted only as Bill Clerk from 19.12.1974, even though the vacancy available was Junior Assistant. The appellant made representation to the department and therefore he was posted as Junior Assistant on 17.2.1976.

(c) According to the appellant, his service from 17.10.1974 is to be treated as Junior Assistant for the purpose of seniority as he was wrongly posted as Bill Clerk. Subsequently, the department upgraded certain posts of Bill Clerks as Junior Assistants and those who are working for two years were promoted as Junior Assistants and seniority list of Junior Assistants was prepared combining the Junior Assistants like appellant, who were Bill Clerks and later on promoted as Junior Assistants and the appellant was given Sl.No.38 in the seniority list published in December, 1978 taking note of his date of joining as Junior Assistant on 17.2.1976 instead from 17.10.1974.

(d) The appellant submitted representation to the authorities to re-fix the seniority considering his service from 17.10.1974. When the said representation was pending, certain Junior Assistants were given promotion as Assistants during October, 1979, and the appellant was not given the said promotion. The appellant was not promoted on the ground that his

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appeal for revision of seniority was pending and his case could be considered for promotion only after disposal of the appeal.

(e) It is the further case of the appellant that several persons, who were juniors to the appellant were further promoted to the next category of Superintendent during March and September, 1985, and the appellant was not given such promotion on the ground that his representation/appeal was pending.

(f) The appellant filed W.P.No.14090 of 1991 before this Court and prayed for a writ of mandamus directing the respondents to reconsider his claim for promotion as Assistant with retrospective effect from the date of promotion of his juniors in October, 1979, and also to promote him as Superintendent from the date of promotion of his juniors in March, 1985, with retrospective effect with consequential monetary benefits.

(g) The said writ petition was allowed by the learned single Judge on the ground that the appellant was selected as Junior Assistant after his name was sponsored through the Employment Exchange and he was ousted for want of vacancy and he ought to have been re-appointed as Junior Assistant from 17.10.1974 as per G.O.Ms.No.3834 Miscellaneous Public Services Department dated 20.12.1974, wherein the Government ordered that the temporary candidates when ousted from service for want of vacancy should be re-appointed straight away in the next vacancy in the same category by the same appointing authority without reference to the Employment Exchange when the interval between the date of discharge and re-appointment is not more than 90 days. The learned single Judge also found that when the appellant was re-appointed, there was a vacancy in the post of junior assistant and therefore his appointment as Bill Clerk was in violation to the said Government Order. The learned single Judge also found that one P.Somasundaram, who was directly appointed as Junior Assistant and joined duty on 30.12.1974 was placed above the appellant in the seniority list of junior assistants. The said writ petition was ultimately allowed by the learned single Judge as prayed for on 3.2.1999.

(h) After the said order of the learned single Judge, the department passed an order on 7.12.1999 and ordered that the appellant is deemed to have been promoted as Assistant with retrospective effect from 31.10.1979 afternoon and his name is ordered to be placed in the seniority list of Assistants above P.Somasundaram, who has already been promoted as Assistant on 31.10.1979. It is further stated that as regards monetary benefits, orders will be issued separately.

(i) By another order dated 14.8.2000, the appellant's name was included in the panel for Superintendent for the year 1985 and he was assigned Sl.No.317 and in view of the retrospective promotion given as Assistant with effect from 31.10.1979 F.N. in accordance with the High Court directions the appellant's name was included in Sl.No.316A and further ordered that the appellant

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shall be deemed to have been promoted as Superintendent with effect from 27.3.1985, the date on which his Junior joined as Junior Assistant. In the said order also it is stated that the orders with regard to monetary benefits will be issued separately.

(j) The department thereafter passed an order on 16.8.2000 by stating that the appellant is not entitled to monetary benefits on the ground that he has not shouldered any responsibility in the promoted post and therefore his request for payment of backwages was declined. The appeal filed by the appellant before the Chairman and Managing Director of the Tamil Nadu Civil Supplies Corporation Limited on 1.11.2000 having not been considered, the appellant challenged the order of rejection of monetary benefits and prayed for a further direction to pay the same with 18% interest and costs in the writ petition.

3. The respondents filed a counter affidavit admitting all the above factual aspects and contended that the appellant having not worked in the promoted post for the above periods and the contempt application filed by the petitioner in Cont.P.No.456 of 2000 having been dismissed on 25.8.2000, the appellant is not entitled to get the monetary benefits.

4. The learned single Judge dismissed the writ petition on the ground that in the earlier order dated 3.2.1999 made in W.P.NO.14090 of 1991, no positive direction was given to consider the monetary benefits. As against the dismissal of the writ petition, this writ appeal is preferred by the writ petitioner.

5. The learned counsel appearing for the appellant submitted that the order of the learned single Judge passed in W.P.No.14090 of 1991 dated 3.2.1999 covered all the points including the payment of monetary benefits since the claim in the writ petition was for promotion as Assistant and Superintendent from the date of promotion of his juniors with retrospective effect with consequential monetary benefits and the writ petition was allowed as prayed for. The said order has become final and the respondents have partly implemented the said order by granting retrospective promotions in the cadre of Assistant and Superintendent. The learned counsel therefore submitted that the appellant having been denied promotion unjustly solely due to the fault of the respondents, which was found in favour of the appellant in an earlier proceeding between the parties, the respondents are not justified in denying the monetary benefits.

6. The learned counsel appearing for the respondents on the other hand submitted that the appellant was given retrospective promotion and is not entitled to get monetary benefits as he has not served in the respective posts for

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receiving salary. The learned counsel also cited the decision of the Supreme Court reported in AIR 1991 SC 958 (Virender Kumar, G.M., Northern Railways v. Avinash Chandra Chadha) and contended that the appellant having not worked in the promoted post, is not entitled to get salary for the promoted post.

7. We have considered the rival submissions made by the learned counsel appearing for the appellant as well as respondents in the light of the earlier order of this Court passed in W.P.NO.14090 of 1991 dated 3.2.1999 between the parties.

8. In W.P.No.14090 of 1991, order dated 3.2.1999, this Court considered the claim of the appellant's seniority in the cadre of Junior Assistant, entitlement of his promotion as Assistant and further promotion as Superintendent from the date of promotion given to his juniors. The operative portion of the judgment in the said order of this Court reads as follows:

> "9. In the light of what is stated above, I am in agreement with the contentions raised by the learned counsel for the petitioner and even though the respondents have rejected several representation in the light of the remarks offered by the senior Regional Manager on 22.05.1982, 15.04.1990, 07.06.1988 and 18.08.1988 respondents have to re-consider the petition of the petitioner and pass appropriate orders as claimed by him. Accordingly, there shall be a direction to the respondents to re-consider the claim of the petitioner for promoting him as Assistant with retrospective effect when his juniors were promoted during October, 1979, and also consider his claim as Superintendent when his junior was promoted during March, 1985, with retrospective effect along with consequential monetary benefits within a period of eight weeks from the date of receipt of copy of this order.
>
> 10. Net result, the writ petition is allowed as prayed for. No costs. Consequently W.M.P.31152 of 1993 is closed as unnecessary."

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From a perusal of the above order, we could see that a direction was given to re-consider the request of the appellant for promoting him as Assistant with retrospective effect from the date of promotion given to his juniors in October, 1979, and also consider his claim for promotion as Superintendent when his juniors were promoted in March, 1985, with consequential monetary benefits, within a period of eight weeks and the writ petition itself was allowed as prayed for.

9. It is not the case of the respondents that the appellant was not eligible/entitled to be promoted as Assistant from 31.10.1979 and as Superintendent from 27.3.1985 and retrospective promotions were given by the respondents through separate orders dated 17.12.1999 and 14.8.2000. This Court in the above referred writ petition, which is the basis for issuing retrospective promotion orders, specifically directed to pay monetary benefits if he was eligible to be promoted. In the light of the above order passed by this Court and the said order having become final, the respondents are not justified in giving a different interpretation and denying the monetary benefits payable to the appellant due to his retrospective promotion.

10. (a) In the decision reported in 1993-II LLJ 69 (Vasant Rao Roman v. Union of India) the Supreme Court held that if an employee is not promoted due to the fault of the department and if he was given promotion with retrospective effect, he is entitled to get monetary benefits as he cannot be blamed for not working in the promoted post.

(b) In (2005) 8 SCC 314 (Srikantha S.M. v. Bharath Earth Movers Ltd.) the Supreme Court considered the unjust denial on the part of the employer to assign work and held that the employee is entitled to get salary and other benefits and the principle of 'No work, No pay' cannot be applied in such cases. In paragraphs 28 to 30, the Honourable Supreme Court held as follows,

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> "28. The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15-1-1993, the appellant had not actually worked and therefore, even if this

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Court holds that the action of the respondent Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of no work, no pay would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava ((1998) 9 SCC 559) and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha II ((2002) 3 SCC 437) also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to full salary and allowances of the entire period he was kept out of service. In Balram Gupta (1987 Supp SCC 228) in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.

30. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4-1-1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench

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> upholding the action of the Company are also set aside. The respondent Company is directed to treat the appellant in continuous service up to the age of superannuation i.e. 31-12-1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15.1.1993 or thereafter. The appeal is accordingly allowed with costs."

The above principle was followed by a Division Bench of this Court in the decision reported in 2007 (2) CTC 135 (M.S.Munivenkatappa v. State Bank of India), in which one of us (N.Paul Vasanthakumar, J.) was a party. In the said decision the Division Bench held that treating the request for voluntary retirement as resignation is illegal and a direction was given to reinstate the appellant therein with backwages and continuity of service and all other service benefits till the date of retirement as the employee was prevented from discharging his functions.

11. In this case, as noticed by us, this Court not only directed to consider for retrospective promotion, but also to grant monetary benefits if eligible for promotions. Hence the respondents cannot escape from the liability of paying monetory benefits for the promoted post of Assistant from 31.10.1979 and as Superintendent from 27.3.1985. The non-payment of the same to the appellant is in violation of the earlier order of this Court and we feel it just and proper to award nominal interest for the delay in payment of monetary benefit.

12. In the result, we allow the writ appeal with a direction to the respondents to pay 6% interest per annum for the monetary benefits, payable to the appellant. The respondents are directed to calculate the said amount and pay the same within a period of six weeks from the date of receipt of copy of this order. We also feel that the respondents have dragged on the matter from 1999 till date by giving erroneous interpretation to the earlier order of this Court and unnecessarily invited litigation and thereby wasted the valuable time of this Court, for which the respondents are bound to pay cost. Hence we direct the second respondent viz., The Chairman-cum-Managing Director, Tamil Nadu Civil Supplies Corporation Limited, Chennai-10, to pay a sum of Rs.20,000/- to the High Court Legal Services Committee, High Court, Madras, within a period of two weeks from the date of receipt of copy of this order.

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The writ appeal is allowed with the above direction with costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Senior Regional Manager,
   Tamil Nadu Civil Supplies Corporation Ltd.,
   Nagercoil - 4.

2. The Chairman-cum- Managing Director,
   Tamil Nadu Civil Supplies Corporation Ltd.,
   Chennai - 10.

3. The Secretary, High Court Legal Service Committee,
   High Court, Madras.

+ 1 cc to Mr. R. Singaravelan, Advocate SR No. 58495

VRK(CO)
SR/26.9.2007

Judgment in

W.A.No.2218 of 2003

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